IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2007

CORAM

The Hon'ble Mr. Justice F.M. IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.P.Nos.21170 of 2000 & 10978 of 2002
and
W.M.P.No.30801 of 2000

S.Rajamani ... Petitioner in both the W.Ps

vs.

1.The Union of India rep. by
the Director General,
Department of Telecommunications,
Sanchar Bhavan, New Delhi.

2.The Chief General Manager,
Department of Telecommunications,
Tamil Nadu Circle, Madras - 2.

3.The Chief General Manager,
Department of Telecommunications,
Maharashtra Circle, Bombay - 400 001.

4.The Registrar,
Central Administrative Tribunal,
Chennai - 104. ... Respondents in both the W.Ps

W.P.No.21170 of 2000 filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the order in O.A.No.892 of 1998 dated 20.10.1998 of the fourth respondent and order No.TFC/ATP/S.Rajamani/28 dated 16.07.1998 of the third respondent and quash the same and consequently direct the respondents to promote the petitioner to the post of Group B Officer with effect from 1979 and thereafter as Grup A Officer from April, 1988 and consequently pay all arrears of salary and other benefits due to such promotion.

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W.P.No.10978 of 2002 filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the order in O.A.No.893 of 1998 passed by the fourth respondent and order bearing No.TFC/ATP/S.Rajamany/28 dated 16.07.1998 passed by the third respondent and quash the same and consequently direct respondents 1 to 3 to pay all pay and allowances withheld by the respondents with effect from 1972 to 31.07.1988 with the interest at the rate of 18% p.a. From the date on which it become due till the date of pay and all other benefits as listed in para 9 of the affidavit.

For petitioner ... Mr.R.Ramesh

For respondents ... Mr.K.Kannan

COMMON ORDER

(Order of the Court was made by F.M.IBRAHIM KALIFULLA, J.)

Petitioner has come forward with these two writ petitions challenging the orders of the Central Administrative Tribunal dated 20.10.1998 passed in O.A.Nos.892 and 893 of 1998. The brief facts which are required to be stated are that the petitioner, who entered service as a Telegraphist in January, 1959 was promoted as Assistant Superintendent of Telegraph Traffic in the year 1972. He was issued with charge memo on 15.05.1976. On 16.01.1979, he was imposed with the punishment of order of reversion from the post of Assistant Superintendent to Telegraphist. The petitioner's appeal against the said order was also rejected by the appellate authority on 17.05.1979. The petitioner preferred W.P.No.9808 of 1979 on 09.07.1979 and an order of interim stay of reversion was also granted on the same day. The interim order was also confirmed on 04.08.1979. On 04.09.1980, the petitioner was put back to his original post of Assistant Superintendent. The writ petition was finally disposed of on 01.02.1983 and the order of reversion was set aside, giving liberty to the contesting respondents to initiate fresh enquiry, if deem fit. Subsequently on 30.07.1987, the contesting respondents passed orders, dropping the disciplinary action against the petitioner. On 01.08.1988, the petitioner was given promotion to Group B and his seniority was revised with effect from April, 1982. The petitioner made a representation on 28.01.1985, claiming promotion to Group B with effect from 1979 and consequently, promotion to Group A with effect from April, 1988. He also filed O.A.No.206 of 1989 claiming the said relief. The said O.A. was disposed of by the Tribunal on 02.03.1991 directing the petitioner to make a fresh representation to the respondents. A fresh representation was made by the petitioner on 15.10.1993. Since it was not disposed of, the petitioner

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filed O.A.Nos.1377 of 1995 and 80 of 1996 and orders were passed on 16.03.1998 directing the respondents to dispose of the petitioner's representation. On 16.07.1998, the petitioner's representation was rejected. On 03.07.1998, the petitioner's claim for monetary benefits was also disposed of. As against the above orders, the petitioner preferred O.A.Nos.892 and 893 of 1998 respectively. O.A.No.892 of 1998 was disposed of by a separate order dated 20.10.1998 at the admission stage itself and in view of the orders passed in O.A.No.892 of 1998, the petitioner's claim in O.A.No.893 of 1998 was also rejected. It is as against the above orders, the petitioner has come forward with the present writ petitions.

2.Assailing the orders of the Tribunal, Mr.Ramesh, learned counsel for the petitioner mainly contended that the petitioner's claim for promotion from the year 1979 having been rejected in the year 1987 and such rejection could have been solely on the ground of the pending disciplinary proceedings. Learned counsel contended that when once the said disciplinary proceedings which culminated in the order of reversion was set aside by this Court in the order dated 01.02.1983 in W.P.No.2808 of 1979, in the absence of any other impediment, the petitioner's claim for promotion from the year 1979 ought to have been granted by the contesting respondents. According to the learned counsel, as things stand, when the contesting respondents failed to follow the sealed cover procedure in the matter of grant of promotion to the petitioner in the relevant years viz., in the year 1979 when his immediate junior Mr.L.Parasiram got promoted, in all fairness, when the Review DPC was constituted in the year 1987, there was no justifiable ground for the contesting respondents to have declined promotion to the petitioner from the year 1979. According to the learned counsel, the grant of promotion from the year 1982 was not justified and therefore the order of the Tribunal in not granting the relief as prayed for is also liable to be interfered with and appropriate direction to be given for granting permission right from the year 1979.

3.As against the above submissions, Mr.K.Kannan, learned standing counsel for the contesting respondents contended that the contesting respondents did not have the opportunity to file reply before the Tribunal, that in the counter affidavit filed in these writ petitions, it has been specifically pointed out that the claim of the petitioner for promotion from the year 1979 when his immediate junior got promoted was rightly considered by the Review DPC and that such consideration was also made even in the year 1981 and since he was found not fit to be promoted in those years and he was found fit only in the year 1982, such consideration made by the Review DPC cannot be found fault with in order to countenance the claim of the petitioner for the grant of promotion right from the year 1979.

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4.On a perusal of the counter affidavit filed by the contesting respondents, we find that in para 12, while dealing with the grounds raised by the petitioner the contesting respondents have specifically stated as under:

> "As mentioned in pre-paras the case for promotion to Group B was taken up after the charges against the petitioner were dropped. As per the review DPC for 1979 and 1981 he was not considered fit for promotion. His promotion was recommended by review DPC of 1982 and therefore fixation benefits are based on 1982 DPC only. The petitioner did not bring out any new valid ground for considering his case for promotion to TTS Group B from April, 1979. It is pertinent to mention that promotion to TTS Group B is by way of selection based on seniority and fitness of the candidates by a recommendatory body whose recommendations have to be followed by the competent authority. After dropping the disciplinary proceedings, the case of the applicant was duly referred by the D.O.T. to a review DPC in order to restore the entitlement of promotion and seniority of the applicant. As stated earlier, the petitioner's case was considered in review DPC 1979 and 1981 but he was not recommended for promotion in both the cases."

5.When we considered the rival submissions of the parties, we also perused the grounds raised by the petitioner in the O.A. before the Tribunal. According to the petitioner, when all the disciplinary proceedings initiated against him was dropped by the order dated 30.07.1987, the respondents are bound to grant the benefit of promotion with due seniority. When the said grievance expressed by the petitioner in the O.A. is considered along with his grievance that his immediate junior got promoted in the year 1979, we find that the least the petitioner can expect is that his claim for promotion was bound to be considered right from the year 1979. We also find that the petitioner's claim for promotion from the year 1979 has been duly considered by the Review DPC.

6.A perusal of the stand of the contesting respondents as stated in the counter affidavit disclose that in the Review DPC for 1979 and 1981, the petitioner was found not fit for promotion. While according to the learned counsel for the petitioner, such rejection of the petitioner's claim was solely on the ground that he was inflicted with the punishment of reversion in the year 1979, according to the contesting respondents, if really that ground weighed with the respondents, there was no necessity for considering his claim in the Review DPC for 1979 and 1981. On a close scrutiny of the respective stand, we find that the stand of the contesting respondents merits acceptance. As rightly contended by the learned counsel for the respondents if really the disciplinary proceedings of the year 1979 should stand in the way of considering the case of the petitioner for promotion in the year 1979, there was no need for the respondents to have considered the claim of the petitioner for the year 1979 and 1981. The very fact that the respondents decided to consider the claim of the

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petitioner for promotion from the year 1979 itself disclose that the impediment viz., the prevalence of the disciplinary proceedings in the year 1979 having been removed, the case of the petitioner for promotion was taken up for consideration right from the year 1979. In fact, his claim for promotion both in the years 1979 and 1981 was found to be not feasible as he was otherwise found not fit for promotion in those years. Therefore, it will have to be held that prevalence of disciplinary proceedings apart, as the petitioner did not come up to the standard for the grant of promotion in the year 1979, he was found not eligible for grant of promotion both in the year 1979 as well as in the year 1981 and since the Review DPC found him fit for promotion only from the year 1982, he was duly granted such promotion, granting the due seniority from the year 1982. Such promotion was accorded to him in the year 1988. If really the disciplinary proceedings was the sole ground for the non- grant of the promotion in the year 1979, when the order of punishment was set aside by this Court on 01.02.1983, there was no reason for the Review DPC to have granted promotion to the petitioner from the year 1982 itself. Therefore, we are convinced that the prevalence of the disciplinary proceedings or the order of punishment in the year 1979 was not the reason for the non-grant of promotion from the year 1979 onwards. Therefore, we accept the stand of the respondents that the non-grant of promotion in the year 1979 was on the ground that the petitioner was otherwise found not fit for promotion from the year 1979 as well as in the year 1981. Therefore, we do not find any good grounds to doubt the conclusion of the Review DPC for having granted the promotion only from the year 1982 when the petitioner was found fit for grant of such promotion.

7.The order of the Tribunal in having confirmed the action of the contesting respondents as regards the grant of promotion from the year 1982, therefore does not suffer from any infirmity either on the ground of legality or on any other grounds. When once the action of the respondents in having granted the promotion as from the year 1982 as confirmed by the Tribunal does not call for any interference, the order for the monetary relief as concluded by the Tribunal in its order dated 20.10.1998 in O.A.No.893 of 1998 also does not call for any interference. We therefore do not find any merit in both these writ petitions. The writ petitions therefore fail and the same are dismissed. No costs. Consequently, connected W.M.P. is dismissed.

mmi

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

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Sanchar Bhavan, New Delhi.

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Maharashtra Circle, Bombay - 400 001.

4.The Registrar,
Central Administrative Tribunal, Chennai - 104.

+1 cc to Mr.R.Raemsh, Advocate Sr.No.45441.

+1 cc to Mr.K.Kannan, Advocate Sr.No.45275.

AKR(CO)
dcp/6.8

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